

REMARKS

I. STATUS OF APPLICATION

Claims 1-25 and 36-40 are pending in the present Application. No claims are amended, added, or canceled in this paper.

The present Office Action indicates that claims 1-25 are pending, which is incorrect. In Applicant's Response to the Office Action of 2 February 2007, claims 26-35 were canceled in favor of new claims 36-40. Accordingly, claims 1-25 and 36-40 are pending in the present Application. ***Correction is respectfully requested.*** Moreover, ***claims 36-40 are not addressed in any way in the present Office Action***, whether the claims be rejected or allowable. Absent a prima facie rejection concerning claims 36-40, Applicant considers these claims to be allowable and an indication as to their allowability is respectfully requested.

Claims 1-25 stand provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-6 of co-pending U.S. Patent Application 11/072,382 ("the '382 Application").

Claims 1-25 stand provisionally rejected on the ground of non-statutory obviousness-type double patenting, as being unpatentable over claims 1-25 of co-pending U.S. Patent Application 10/524,367 ("the '367 Application") in view of U.S. Patent 5,300,171 to Braun *et al.* ("Braun").

Claims 1-25 stand rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention.

Claims 1-25 stand rejected under 35 USC § 103(a), as being unpatentable over U.S. Patent 6,372,323 to Kobe *et al.* ("Kobe") in view of Braun and U.S. Patent 6,960,272 to Tokas *et al.* ("Tokas").

II. PROVISIONAL DOUBLE PATENTING REJECTIONS

A. Provisional rejection of claims 1-25 over claims 1-6 of the co-pending '382 Application

Claims 1-25 stand provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-6 of the co-pending '382 Application.

Applicant notes the provisional rejection, which will be taken up in due course upon the allowance of either the present Application or the '382 Application. Applicant, however, does not acquiesce in this rejection, but rather chooses to take up this rejection if and when a non-provisional rejection is made by the Office.

B. Provisional rejection of claims 1-25 over claims 1-25 of the co-pending '367 Application in view of Braun

Claims 1-25 stand provisionally rejected on the ground of non-statutory obviousness-type double patenting, as being unpatentable over claims 1-25 of the co-pending '367 Application in view of Braun.

Applicant notes the provisional rejection, which will be taken up in due course upon the allowance of either the present Application or the '367 Application. Applicant, however, does not acquiesce in this rejection, but rather chooses to take up this rejection if and when a non-provisional rejection is made by the Office.

III. 35 USC § 112 REJECTIONS

Claims 1-25 stand rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention.

In the “Answers to Applicant’s Arguments” section of the present Office Action, the Office states:

Applicant’s arguments in the response filed on April 9, 2007 regarding the previous rejections of record have been considered but are moot since the rejections have been withdrawn.

The rejections under 35 USC § 112, second paragraph, made in the Office Action of 2 February 2007, however, are maintained in the present Office Action. The Office fails in the present Office Action to address Applicant’s remarks in Applicant’s Response to the Office Action of 2 February 2007 concerning these rejections. Applicant’s remarks are repeated below and the Office is respectfully requested to address the remarks in a Notice of Allowance or in the next Office Action, as appropriate.

A. The term “thin” in claim 1 is not indefinite

The Office alleges:

The term “thin” in claim 1 is a relative term which renders the claim indefinite. The term “thin” is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear what constitutes a “thin” film or layer, i.e., what dimensions are considered to be thin.¹

Applicant respectfully asserts that acceptability of the language used in a claim depends upon whether a person having ordinary skill in the art would understand what

¹ Detailed Action, p. 4, ll. 4-8.

is claimed, in light of the Specification. Regarding the term “thin,” the present Specification states:

*Plastic film substrate 15 is a thin, flexible film, preferably a clear film about 0.002 inches thick, that forms and provides a flexible durable, dimensionally stable substrate.*²

Given this teaching, Applicant respectfully asserts that the Specification provides a standard for ascertaining the requisite degree and that a person having ordinary skill in the art would be “reasonably apprised” of the scope of the invention, contrary to the Office’s allegation.

In *Modine Manufacturing Co. v. U.S. International Trade Commission*,³ the invention related to a condenser for use in automotive air conditioning. The claims at issue recited “flow paths being of *relatively small hydraulic diameter*.”⁴ The Federal Circuit interpreted this limitation, in light of the specification, to be definite and to mean a hydraulic diameter in the range of about 0.015 to 0.040 inch.⁵ With some modification for the involved technologies, the reasoning applies directly to the present case. The term “thin” is not indefinite in light of the teaching of the present Specification.

It is, therefore, respectfully requested that the rejection of claim 1 under 35 USC § 112, second paragraph, in which the term “thin” is alleged to be indefinite, be reconsidered and withdrawn.

² WO 2005/026434, p. 6, ll. 7-9.

³ *Modine Mfg. Co. v. United States Int’l Trade Comm’n*, 75 F.3d 1545, 37 USPQ2d 1609 (Fed. Cir.), cert. denied, 518 U.S. 1005 (1996).

⁴ *Modine Mfg. Co.*, 37 USPQ2d at 1611 (emphasis in original).

⁵ *Modine Mfg. Co.*, 37 USPQ2d at 1615.

B. The term “low” in claim 1 is not indefinite

The Office alleges:

The term “low” in claim 1 is a relative term which renders the claim indefinite. The term “low” is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear what constitutes a “low” durometer, i.e., what values are considered to be low.⁶

As discussed above, Applicant respectfully asserts that acceptability of the language used in a claim depends upon whether a person having ordinary skill in the art would understand what is claimed, in light of the Specification. Regarding the term “low,” the present Specification states:

Silicone elastomer 13 is formed to have a low-durometer, i.e., less than 40 on the Shore A scale.⁷

Given this teaching, Applicant respectfully asserts that the Specification provides a standard for ascertaining the requisite degree and that a person having ordinary skill in the art would be “reasonably apprised” of the scope of the invention, contrary to the Office’s allegation. The discussion above concerning *Modine Manufacturing Co. v. U.S. International Trade Commission* applies equally to the Office’s allegation that the term “low” is indefinite.

It is, therefore, respectfully requested that the rejection of claim 1 under 35 USC § 112, second paragraph, in which the term “low” is alleged to be indefinite, be reconsidered and withdrawn.

⁶ *Detailed Action*, p. 4, ll. 9-13.

C. The term “smooth” in claim 7 is not indefinite

The Office alleges that the term “smooth” in claim 7 renders claim 7 indefinite. The present Specification teaches “[s]urface 19 is preferably formed to have a surface texture or pattern, as shown, although surface 19 may alternatively be matte or smooth.”⁸ Thus, Applicant respectfully asserts that one having ordinary skill in the art would appreciate a “smooth” surface to be a surface absent of such texture or pattern.

It is, therefore, respectfully requested that the rejection of claim 7 under 35 USC § 112, second paragraph, in which the term “smooth” is alleged to be indefinite, be reconsidered and withdrawn.

D. The term “heavily” in claim 8

The Office alleges that the term “heavily” in claim 8 renders claim 8 indefinite. The term “heavily” is deleted from claim 8 in this paper to advance prosecution. Applicant’s amendment of claim 7, however, is not an acquiescence in the propriety of the Office’s rejection.

It is, therefore, respectfully requested that the rejection of claims 1-25 under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention, be reconsidered and withdrawn.

IV. 35 USC § 103 REJECTIONS

Claims 1-25 stand rejected under 35 USC § 103(a), as being unpatentable over Kobe in view of Braun and Tokas. Applicant respectfully asserts that the combination of

⁷ WO 2005/026434, p. 6, ll. 17-18.

Kobe, Braun, and Tokas fails to render the present invention obvious, as discussed below.

In the consideration and determination of obviousness under 35 U.S.C. 103, the four factual inquires⁹ used as a background for determining obviousness are (1) determining the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims in issue; (3) resolving the level of ordinary skill in the pertinent art; and (4) evaluating evidence of secondary considerations. In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.¹⁰ A prior art reference must be considered in its entirety, *i.e.*, as a whole, including portions that would lead away from the claimed invention.¹¹ Of particular note, the U.S. Supreme Court has recently stated that “when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious.”¹²

A. One of ordinary skill in the art would not have been motivated to combine Kobe and Braun

The Office alleges that “[o]ne of ordinary skill in the art would have been motivated by the fact that Kobe desires a flexible article to have a low durometer such

⁸ *Specification*, p. 5, l. 31, through p. 6, l. 1.

⁹ *See Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966).

¹⁰ *MPEP 2141.02*, citing *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983).

¹¹ *MPEP 2141.02*, citing *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

¹² *KSR Int'l. Co. v. Teleflex, Inc.*, 550 U.S. ____ 2007, citing *United States v. Adams*, 383 U.S. 39, 40 (1966).

as less than 40 on the Shore A hardness in order to assure flexibility.”¹³ Braun teaches “a silicone rubber with a Shore A durometer of about 30 and 70.”¹⁴ For Kobe to be modified using the teachings of Braun, one of ordinary skill in the art at the time of the invention would have to have appreciated that Braun’s “silicone rubber with a Shore A durometer of about 30 and 70” would be an improvement over Kobe’s elastomeric material. Braun teaches that the disclosed durometer silicone rubber “allows a tape to be made which can be formed and stored in a roll form.”¹⁵ Kobe, however, is silent with regard to any desire to store its product in a roll form. On the other hand, Kobe teaches that its overriding concern is slip control. Braun, however, provides no insight as to why its “silicone rubber with a Shore A durometer of about 30 and 70” would provide improved slip control over Kobe’s elastomeric material.

For at least these reasons, Applicant respectfully asserts that one of ordinary skill in the art would not have appreciated a benefit in combining the teachings of Kobe and Braun and, thus, Kobe and Braun cannot be properly combined to render the present invention, as set forth in claims 1-25, obvious.

B. Claim 2 is separately allowable over the cited references, as Tokas teaches away from the claimed invention

Claim 2 requires the plastic film, on which the silicone elastomer is disposed, to have “a surface energy of less than about 40 Dynes/cm.” The Office relies on Tokas to teach “that thermoplastic elastomers with polyolefinic material has a low surface energy, such as 28-30 dynes/cm....”¹⁶ However, “[i]t is well settled that a prior art reference is

¹³ *Detailed Action*, p. 6, ll. 8-10.

¹⁴ *Braun*, col. 4, ll. 67-68.

¹⁵ *Braun*, col. 4, l. 68, through col. 5, l. 2.

¹⁶ *Detailed Action*, p. 6, ll. 12-14.

relevant for *all* that it teaches one of ordinary skill in the art."¹⁷ Regarding the portion of Tokas cited by the Office, Tokas teaches:

*Pre-cured and cured SANTOPRENE® TPE is particularly difficult to adhesively bond because it has a polyolefinic thermoplastic continuous matrix (similar to polyolefinic materials like polyethylene and polypropylene) that has an especially low surface energy of 28-30 dynes/cm....*¹⁸

Applicant respectfully asserts that a person having ordinary skill in the art at the time of the invention could not have been motivated to modify Kobe's article to include a low surface energy film because Tokas teaches away from such a combination. It is by now well established that teaching away by the prior art constitutes *prima facie* evidence that the claimed invention is not obvious.¹⁹ For at least this additional reason, claim 2 is allowable over Kobe, Braun, and Tokas.

C. Claim 3 is separately allowable over the cited references, as Braun's teaching is outside the claimed range of values

Claim 3 requires the durometer of the silicone elastomer to be "less than 30 on the Shore A scale." The Office relies upon Braun to teach this limitation and states on the record that Braun teaches a silicone rubber having "a Shore A durometer hardness between 30 and 70."²⁰ Thus, the claimed hardness of the silicone elastomer is outside Braun's teaching of "between 30 and 70." Accordingly, the combination of Kobe, Braun, and Tokas cannot render the present invention, as set forth in claim 3, obvious, because the cited references fail to teach or suggest all of the claimed limitations.

¹⁷ *In re Fritch*, 23 U.S.P.Q.2d (BNA) 1780, 1782 (Fed. Cir. 1992).

¹⁸ *Tokas*, col. 2, ll. 15-20.

¹⁹ *See, inter alia, In re Fine*, 5 U.S.P.Q.2d (BNA) 1596, 1599 (Fed. Cir. 1988); *In re Nielson*, 2 U.S.P.Q.2d (BNA) 1525, 1528 (Fed. Cir. 1987); *In re Hedges*, 228 U.S.P.Q. (BNA) 685, 687 (Fed. Cir. 1986).

²⁰ *Detailed Action*, p. 6, ll. 1-2.

D. Regarding claims 6 and 8-10, the limitation “polished” is not a method limitation and the cited references fail to disclose or suggest a silicone elastomer having a polished surface finish

Claim 6, from which claims 8 and 9 depend, and claim 10 require the silicone elastomer to have “a polished surface finish.” The Office alleges that “the limitation ‘polished’ is a method limitation and does not determine the patentability of the product, unless the process produces unexpected results.”²¹ Applicant respectfully traverses the Office’s allegation because the limitation “polished” is not a method limitation but is, instead, structural in nature.

In *In re Garnero*,²² the CCPA held certain limitations to be structural rather than process limitations. Claim 1 in *Garnero* recited:

*A composite, porous, thermal insulation panel characterized by dimensional stability and structural strength consisting essentially of expanded perlite particles which are interbonded one to another by interfusion between the surfaces of the perlite particles while in a pyroplastic state to form a porous perlite panel.*²³

On appeal to the CCPA, the solicitor for the Patent Office argued that the limitation “interbonded one to another” was a process limitation that was not a patentable distinction over the prior art. The CCPA disagreed and held the limitation to be a structural limitation, stating that:

it seems to us that the recitation of the particles as “interbonded one to another by interfusion between the surfaces of the perlite particles” is as capable of being construed as a structural limitation as “intermixed,” “ground in place,” “press fitted,” “etched,” and “welded,” all of which at

²¹ *Detailed Action*, p. 7, ll. 3-5.

²² *In re Garnero*, 412 F.2d 276, 162 USPQ 221, 223 (CCPA 1969).

²³ *Garnero*, 162 USPQ at 222.

*one time or another have been separately held capable of construction as structural, rather than process, limitations....*²⁴

This reasoning reads directly on the present case with only slight modification for the technologies involved. A “polished surface finish” is a structural limitation of the silicone elastomer, not merely the result of a process for making the silicone elastomer. Accordingly, “polished surface finish” must be given patentable weight.

The Office alleges “Kobe meets the limitation that the silicone elastomer has a polished surface finish, since figures 1 and 8 clearly show non-raised or flat portion on the article.”²⁵ Claims, however, are construed in light of the specification, of which they are a part.²⁶ The present Specification teaches “[t]he phrase ‘surface finish’ will be used herein to describe the surface of materials on a very fine, or microscopic, scale....”²⁷ While the drawings of Kobe show enlarged views, and in those views the surfaces of Kobe’s article may appear smooth, Kobe is completely silent with regard to any surfaces being having polished surface finishes, *i.e.*, polished on a microscopic scale, as required by claims 6 and 8-10. Not only must the prior art suggest the claimed invention, the prior art must disclose each and every element of the claimed invention.²⁸ The cited references, however, fail to meet this standard. Accordingly, claims 6 and 8-10 are allowable over Kobe, Braun, and Tokas.

²⁴ *Garnero*, 162 USPQ at 223. See also *Hazani v. United States Int’l Trade Comm’n*, 12 F.3d 1473, 44 USPQ2d 1358, 1363 (Fed. Cir. 1997) (citing *In re Moore*, 439 F.2d 1232, 1236, 169 USPQ 236, 239 (CCPA 1971)):

Hazani argues that the “chemically engraved” claims are product-by-process claims. We agree with the respondents, however, that those claims are best characterized as pure product claims, since the “chemically engraved” limitation, read in context, describes the product more by its structure than by the process used to obtain it.

²⁵ *Detailed Action*, p. 7, ll. 9-11.

²⁶ *Phillips v. AWH Corporation*, 415 F.3d 1303, 1315-16 (Fed. Cir. 2005).

²⁷ *WO 2005/026434*, p. 5, ll. 2-3.

E. Claim 7 is separately allowable over the cited references

Claim 7 requires the polished surface finish of the silicone elastomer to be smooth. The Office relies upon Kobe to teach surface finish limitations of the claimed invention. As discussed above concerning the 35 USC § 112, second paragraph, rejection of claim 7, the surface of the silicone elastomer omits a texture or pattern. Kobe, however, fails to teach or disclose such a limitation. Rather, each of Kobe's embodiments includes protrusions and, thus, is not smooth in the sense of claim 7.

F. Claim 11 is separately allowable over the cited references

Claim 11 requires the texture to be "an array of upraised dimples," examples of which are shown in Figure 3. The Office alleges that Kobe's projections are the claimed dimples.²⁹ A dimple, for example, is "an indented, hollowed, or depressed area in the surface of something."³⁰ Kobe neither depicts nor describes such a structure. Accordingly, the cited references cannot render the present invention, as set forth in claim 11, obvious.

G. Claim 12 is separately allowable over the cited references

Claim 12 requires the silicone elastomer to have "a matte surface finish." The Office alleges that Kobe's silicone elastomer "is deemed to [have] a matte finish since it contains projections."³¹ As discussed above concerning the rejection of claims 6 and 8-10, the present Specification teaches "[t]he phrase 'surface finish' will be used herein to describe the surface of materials on a very fine, or microscopic, scale...."³² Thus, Kobe is

²⁸ *In re Lee*, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002).

²⁹ *Detailed Action*, p. 8, ll. 1-2.

³⁰ See <http://encarta.msn.com/encnet/refpages/search.aspx?q=dimple>.

³¹ *Detailed Action*, p. 8, ll. 3-4.

³² *WO 2005/026434*, p. 5, ll. 2-3.

silent with regard to its article having matte finish in the same way that Kobe fails to teach or disclose its article having a polished finish.

H. Claim 13 is separately allowable over the cited references

Claim 13, as amended herein, requires the plastic film to be “a heat stabilized plastic film.” The cited references, whether taken singly or in combination, neither disclose or suggest a heat stabilized plastic film. Accordingly, claim 13 is allowable over the cited references.

I. Claim 16 is separately allowable over the cited references

Claim 16 requires “graphical indicia associated with the plastic film.” The Office relies upon Kobe to disclose “the plastic film or silicone elastomer can be tinted with pigments or dyes (*col. 5, lines 62-67*).”³³ The cited portion of Kobe discloses:

The thermoplastic materials may also contain additives, including but not limited fillers, fibers, antistatic agents, lubricants, wetting agents, foaming agents, surfactants, pigments, dyes, coupling agents, plasticizers, suspending agents, hydrophilic/hydrophobic additives, and the like.

Kobe is describing, in general, the types of additives that its thermoplastic materials may contain. One of ordinary skill in the art would appreciate that these additives are of the type that are added to a batch of material, rather than to create a graphical indicia. While a graphical indicia may comprise pigment or a dye, merely stating that pigment or a dye may be included in its thermoplastic material does not meet the requirement that the prior art teach or suggest all of the claimed limitations. Claim 16 is, therefore, allowable over the cited references.

³³ *Detailed Action*, p. 8, ll. 13-14 (emphasis in original).

J. Claims 17 and 18 are separately allowable over the cited references

Claim 17 requires the silicone elastomer to be “tinted.” Claim 18 requires “graphical indicia associated with the silicone elastomer.” In rejecting each of these claims, the Office relies upon Kobe to disclose “the plastic film or silicone elastomer can be tinted with pigments or dyes (*col. 5, lines 62-67*).”³⁴ The cited portion of Kobe, however, is directed to materials of its backing layer, such as backing layer 22, not its elastomeric material.³⁵ Kobe describes elsewhere³⁶ the characteristics of its elastomeric material. Kobe, however, fails to disclose or suggest in any way that its silicone elastomer may be tinted, as required by claim 17, or any graphical indicia associated with its silicone elastomer, as required by claim 18. Thus, claims 17 and 18 are allowable over the cited references.

K. The phrases “configured for” and “configured to” in claims 19-24 impart structural limitations and the cited references fail to disclose or suggest the limitations of claims 19-24

The Office alleges that, in claims 19-24, “the limitations ‘for application on the fingertips of users,’ ‘for application on handheld devices,’...and ‘configured to be sewn into fabric’ are deemed to be statements with regard to the intended use and is not further limiting in so far as the structure of the product is concerned,” citing MPEP 2111.02.³⁷ It should be noted that MPEP 2111.02 relates to the effect of limitations in the **preamble** of a claim, not to the effect of limitations such as the limitations at issue here, which are located in the body of a claim.

Each of claims 18-24 recites the phrase “configured for” or “configured to.” MPEP 2111.04 instructs that such phrases (*e.g.*, “adapted to,” “adapted for,” and the like) “may

³⁴ *Detailed Action*, p. 8, ll. 13-14 (emphasis in original).

³⁵ *Kobe*, col. 5, ll. 51-67, and Figure 1.

³⁶ *Kobe*, col. 8, l. 52, through col. 9, l. 63.

raise a question as to the limiting effect of the language in a claim.”³⁸ Applicant respectfully asserts that the phrases “configured for” and “configured to” imparts definite, structural limitations to the claimed invention, rather than merely the intended use of the invention. For example, the phrase “configured for application on the fingertips of users” means the film is **structurally** configured for application on the fingertips of users, not merely that the film is used on the fingertips of users.

Moreover, the Office alleges that “it is noted that Kobe’s article is useful in golf clubs, baseball bats, household articles, non-slip walking surfaces, etc....The intended uses of Kobe’s article include Applicant’s intended uses for their film.” The Office is reminded that the prior art must disclose each and every limitation of the claimed invention.³⁹ Whether Kobe teaches use of its article golf clubs, baseball bats, household articles, non-slip walking surfaces, etc.,” the prior art must teach all of the limitations of the rejected claims, including, for example, the film being configured for application on the fingertips of users, the film being configured for application on a material handling device, *etc.* for the prior art to render the rejected claims obvious. If the prior art fails to disclose each of the limitations in each of claims 18-24, then the obviousness rejection of claims 18-24 is *prima facie* deficient. Applicant respectfully asserts that claims 18-24 are allowable over the cited references.

³⁷ *Detailed Action*, p. 8, ll. 17-21.

³⁸ See MPEP 2111.04 and *Hoffer v. Microsoft Corp.*, 405 F.3d 1326, 1329, 74 USPQ2d 1481, 1483 (Fed. Cir. 2005).

³⁹ *In re Lee*, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002).

L. The Office has failed in its burden to describe how the cited references are applied to claim 25

While claim 25 is listed in the Detailed Action as being rejected under 35 USC § 103(a) over Kobe, Braun, and Tokas, the Office has failed in its burden to describe how the cited references are applied to claim 25. The burden includes showing an objective teaching in the cited art that would lead one of ordinary skill in the art to combine the teachings of references.⁴⁰ If not “readily apparent,” the examiner must explain why the combination of references is proper.⁴¹ No such explanation is provided. Applicant respectfully asserts that the cited references, whether taken singly or in combination, fail to disclose or suggest “a label stock having graphical indicia adhered to the plastic film, such that the graphical indicia is visible,” as required by claim 25. Accordingly, claim 25 is allowable over the cited references.

Therefore, it is respectfully requested that the rejection of claims 1-25 under 35 USC § 103(a), as being unpatentable over Kobe in view of Braun and Tokas, be reconsidered and withdrawn.

⁴⁰ *In re Fine*, 5 U.S.P.Q.2d (BNA) 1596, 1598 (Fed. Cir. 1988).

⁴¹ *Ex parte Skinner*, 2 U.S.P.Q.2d (BNA) 1788, 1790 (Bd. Pat. App. & Int. 1987).

CONCLUSION

Applicant's arguments and amendments are made without prejudice or disclaimer. Distinctions from the various references cited by the Office have been discussed by Applicant. Other distinctions, however, may exist. Applicant reserves the right to discuss these distinctions in a future Response or on Appeal, if appropriate. By not responding to additional statements made by the Office, Applicant does not acquiesce to the Office's additional statements. Applicant's response is sufficient to overcome the Office's rejections.

Wherefore, in view of the foregoing remarks, this application is considered to be in condition for allowance, and an early reconsideration and issuance of a Notice of Allowance are earnestly solicited. The Examiner is invited to contact the undersigned at (817) 578-8616 with any questions, comments, or suggestions relating to the referenced patent application.

Respectfully submitted,

27 September 2007
Date

/darencdavis#38425/
James E. Walton, Reg. No. 47,245
Daren C. Davis, Reg. No. 38,425
Brian E. Harris, Reg. No. 48,383

Law Offices of James E. Walton, P.L.L.C.
1169 N. Burleson Blvd., Suite 107-328
Burleson, Texas 76028
(817) 447-9955 (voice)
(817) 447-9954 (facsimile)
jim@waltonpllc.com (e-mail)

CUSTOMER NO. 38441

ATTORNEY AND AGENTS FOR APPLICANT